UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
ELECTRIC BOAT CORPORATION,	)	
	)	
Employer,	)	
	)	
and	)	Case No. 1-RC-124746
	)	
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1302,	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
METAL TRADES COUNCIL OF NEW LONDON COUNTY, AFFILIATED WITH THE METAL TRADES DEPARTMENT, AFL-CIO,	)	
	)	
Intervenor	)	
	)	

INTERVENOR'S BRIEF ON REVIEW

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Dated: September 11, 2014

I. INTRODUCTION

On August 14, 2014, a three member panel of the National Labor Relations Board issued an Order granting Intervenor's Request for Review of the Regional Director's Decision and Direction of Election severing a 70-year old, certified bargaining unit of all production and maintenance employees employed by the Electric Boat Company ("Electric Boat" or "the Employer") at its shipyard in Groton, Connecticut.[1] Decision and Direction of Election ("D&D") at 2. The panel found that the Intervenor's request "raises substantial issues warranting review." *See* Order, Case 01-RC-124746 (Aug. 14, 2014).

Where the Board grants a request for review, but does not rule upon the issues presented in the order granting review, "the appellants and other parties may . . . file briefs with the Board." 29 C.F.R. § 102.67(c). Intervenor Metal Trades Council of New London County ("MTC") has already filed two briefs in this matter: its Post Hearing Brief to the Regional Director, and its Request for Review. These briefs are part of the record on review, 29 C.F.R. §§ 102.67(g) & 102.68, and present detailed arguments in support of the MTC's position. The MTC relies on these briefs in the current proceedings before the Board. Accordingly, this submission will not repeat arguments already made. Instead, the MTC will treat this submission as a reply brief, limited to a concise response to some of the major arguments in Petitioner's Opposition to the Request for Review which have not already been addressed. The MTC incorporates by reference its previous briefs. For ease of reference, the MTC also attaches its July 21, 2014 brief in support of its Request for Review.

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[1] The Region took this action based on a representation petition by the United Brotherhood of Carpenters and Joiners of America, Local 1302 ("Local 1302," or "Petitioner").

II. ARGUMENT

In its Request for Review, the MTC argued that the Regional Director erred as a matter of fact and law when she carved out a craft unit consisting of seven job classifications, or about two hundred twenty employees, from a pre-existing production and maintenance unit of over two thousand two hundred employees. The MTC showed that the Regional Director erred in at least three ways. First, she ignored longstanding Board precedent governing craft severance cases, applying instead the inapposite standard for establishing craft units in previously unrepresented groups of employees. Second, she misapplied the factors established by the Board in *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966) to determine when craft severance is appropriate. Third, she made critical errors of fact in reviewing the record.

Petitioner's claims in opposition to the request for review are without merit. First, Petitioner's suggestion that there has been a schism in the MTC warranting a separate election is unsupported by facts or law. Second, Petitioner's arguments regarding industrial stability are improperly based on the stability of Local 1302, not the petitioned-for employees. Finally, the Petitioner's attempt to remove the "separate identity" factor from the Board's scope of review is without merit. Petitioner's arguments will be addressed in turn.

A. No Schism Has Occurred

As set forth in the MTC's previous briefs, the underlying reason for this craft severance petition is the decision of the United Brotherhood of Carpenters and Joiners of America ("UBC") to disaffiliate from the AFL-CIO. By disaffiliating, the UBC forfeited its eligibility, as well as its affiliates' eligibility, to participate within the Metal Trades Department ("MTD") and its affiliated councils, including the MTC. Intervenor's Request for Review ("Int.'s Request") at 8-

10. The MTC's membership consists of affiliated Local Unions; and, since the UBC's disaffiliation from the AFL-CIO, Local 1302 is no longer eligible to participate in the MTC.

Throughout its opposition, Petitioner implies this disaffiliation constitutes a schism at the national level warranting a new election. Pet'r's Opp'n to Request for Review ("Opp'n") at 1, 11-16, 26-27. As an initial matter, the Petitioner cites no support for the proposition that a schism analysis is appropriate in the context of a craft severance petition. *Standard Oil Co.*, 116 NLRB 1762, 1765 (1956) (finding schism doctrine did not apply where petitioning union sought to sever a segment of bargaining unit employees from an overall unit historically represented by intervening union, where officers left intervening union to join petitioning union and represent employees through petitioning union, and where employer dealt with officers, but only as individual employees or officers of intervening union).

Even assuming that the Board would entertain a schism argument in the severance context, the Petitioner cannot satisfy its burden under that doctrine. "A schism warranting an election depends not only on the existence of a basic intraunion conflict, but also upon action by the employees in the unit arising out of the basic conflict and creating such confusion in the bargaining relationship that stability can be restored only by an election." *Hershey Chocolate Corp.*, 121 NLRB 901, 908 (1958). In *Hershey Chocolate*, a local union was the certified bargaining representative. The international with which it had been affiliated was expelled from the AFL-CIO for corruption, and the membership of the local voted to affiliate with a new international. Subsequently, members of the bargaining unit supporting the "old" and "new" international union each claimed to be the certified bargaining representative and demanded to be recognized as such. In these narrow circumstances, the Board recognized "it is only through the medium of an election that stability can be restored to the disrupted relationship." *Id.* at 910.

On the other hand, intraunion conflicts that do not create "confusion as to the identity of the organization designated by the employees to represent them" fail to constitute a schism under Board law. *Louisiana Creamery, Inc.*, 120 NLRB 170 (1958) (expulsion of the local and its parent international did not create confusion as to the identity of certified bargaining representative); *M&M Bakeries, Inc.*, 121 NLRB 1596 (1958), *enf'd* 271 F.2d 602 (1st Cir. 1959) (expulsion of international union from AFL-CIO did not affect the status of the local union as the bargaining representative; the certification ran to the local union, not the international).

No schism has occurred here. The record in this case is devoid of any confusion over who serves as the exclusive certified bargaining representative: the AFL was certified as the bargaining agent for the unit in 1945, and the Board amended the certification in 1979 to substitute the MTC. Int.'s Request at 2. At no time has either the UBC or Local 1302 been the certified bargaining representative for any of the employees in the unit or recognized by Electric Boat as the bargaining representative. The MTC has complete authority to negotiate and administer the collective bargaining agreement ("CBA") for all employees in the unit, and the parties to the CBA are MTC and Electric Boat.[2] *Id.* at 3. As the record reflects, more than two and a half years have passed since the termination of the Solidarity Agreement, which had permitted UBC and its affiliates to participate in MTD and its councils notwithstanding their disaffiliation from the AFL-CIO. Since that time the MTC has continued to serve as the

[2] The CBA designates local unions, including Petitioner, as agents of MTC for purposes of administering certain limited aspects of the contract with respect to certain classifications of employees. Int.'s Request at 23. Board law is clear, however, that the agent of a certified bargaining representative is not the certified bargaining representative. Rather, the certified representative has the right to select agents to service bargaining unit employees, and can change those relationships without consequence to its own status as exclusive representative of all unit employees. *Mountain Valley Care*, 346 NLRB 281, 282-83 (2006); *Nevada Security Innovations*, 341 NLRB 953, 955 (2004), *Houdaille-Duval-Wright Co.*, 183 NLRB 678 (1970).

exclusive certified bargaining representative for the unit at Electric Boat, including the petitioned-for employees, and there has been no dispute about its status.[3]

Moreover, Petitioner cites to no record evidence regarding circumstances at Electric Boat or within the MTC to support any schism argument. Rather, it attempts to use statements made many years ago by MTD President Ronald Ault regarding the UBC's disaffiliation from the AFL-CIO at the national level, as well as the possible termination of the Solidarity Agreement and his concerns about the possible ramifications of that decision. *See* Opp'n at 1, 11-14 (quoting statements from Ault in August 2003 and "at some unknown date prior to June 1, 2011"). Petitioner cannot transform President Ault's leadership of the MTD – which does not represent any of the petitioned for employees and is not a party to this proceeding – into a schism in the bargaining unit at issue here.

President Ault's statements show nothing more than the existence of an intraunion conflict between the UBC and the AFL-CIO. His statements do not touch upon the necessary second element for a finding of schism: "action by the employees in the unit arising out of the basic conflict and creating such confusion in the bargaining relationship that stability can be restored only by an election." *Hershey Chocolate Corp.*, 121 NLRB at 908. President Ault's statements are not directed at the MTC or Electric Boat, or indeed at any particular bargaining

[3] Petitioner makes much of the MTC's attempts to work with the MTD to keep Local 1302 affiliated on the local level, notwithstanding the UBC's disaffiliation from the AFL and the expiration of the Solidarity Agreement. Opp'n at 15. The Intervenor freely acknowledges that it sought to keep Local 1302 within the MTC, but was not able to do so due to events at the national level. This does not, however, help Petitioner's schism argument. As discussed throughout, Local 1302 has never served as the certified bargaining representative, rather, it has served as one of many agents of the MTC. The fact that MTC wanted Local 1302 to remain one of its agents does not impact MTC's status as certified bargaining representative, see *supra* n.2, and Petitioner has presented no evidence that this attempt created any "confusion as to the identity of the organization designated by the employees to represent them." *Louisiana Creamery,* 120 NLRB 170.

unit. Rather, they are the product of his due diligence, his attempt to identify and communicate the possible pitfalls that could flow from UBC's disaffiliation from the AFL-CIO, and from the subsequent termination of the Solidarity Agreement. Statements made long ago within the MTD/AFL-CIO hardly establish confusion outside it, many years later, among the employees or the employer at issue here. Without more, the Petitioner cannot establish a schism, assuming that the doctrine applies to severance petitions. *Standard Oil Co.*, 116 NLRB at 1765.

B. The Petitioner's Adequacy of Representation Argument is About Local 1302, Not the Unit Employees

The Regional Director's decision, and the Petitioner's Opposition to the Request for Review, are premised on the notion that industrial stability is threatened without Local 1302's participation in the MTC. Decision and Direction of Election ("D&D") at 9-11; Opp'n at 24-27. As set forth in the MTC's previous briefs, this is sheer conjecture which finds no support in the record. The employees in the petitioned for classifications have always been, and, notwithstanding the expiration of the Solidarity Agreement, continue to be extremely well represented by the MTC at the bargaining table, in terms and conditions of employment, in grievance handling, and by stewards on the jobsite.[4] Int.'s Request at 2-4, 8-10, 23-27.

A careful reading of the Petitioner's Opposition reveals that it is Local 1302, not the petitioned-for employees, that has been destabilized. All of the harms that Petitioner alleges will impact bargaining unit members are purely speculative. *Id.* at 17-18 (expressing "concern," that

[4] Throughout its opposition brief, the Petitioner refers to "Local 1302 representative[s]" and to its Chief Steward and stewards. Opp'n at 5, 16-17. However, the stewards are not Local Union representatives; they are MTC representatives, which – with respect to Local 1302 – is a point reinforced by the Solidarity Agreement between the UBC and the MTD. Pet. Ex. 1 (providing that UBC has authority to appoint stewards, but all appointed stewards are representatives of metal trades councils). As discussed *supra* and in MTC's Request for Review, Local 1302's "representation" of carpenters within the production and maintenance unit has only been as an agent of the MTC. Again, Local 1302 has never acted as the exclusive bargaining representative and has never been recognized by the Employer as such.

overtime, jurisdictional disputes, and job security could be affected by the disaffiliation). The only non-speculative harms that have resulted from the UBC's disaffiliation or the termination of the Solidarity Agreement are harms to Local 1302. For example, Petitioner provides no evidence that the petitioned-for employees have been inadequately represented at the bargaining table; indeed, as noted in the Request for Review, the most recently negotiated CBA is a strong contract for all unit employees, including the carpenter classifications. Int.'s Request at n.5. Rather, Petitioner states that *its* representative was excluded from negotiations, and *it* was given no updates on the status of contract negotiations. Opp'n at 17. Likewise, Petitioner provides no evidence that that the employees in the carpenter classifications were disenfranchised at a recent strike vote. Rather, it argues that Local 1302 was not given the opportunity to set up its own table for the vote. *Id.*

As *Mallinckrodt* makes clear, harms to a labor organization, without more, are not a basis for craft severance. Rather, the Board balances "the interest of the employer and the total employee complement in maintaining the industrial stability and resulting benefits of an historical plantwide bargaining unit as against the interest of a portion of such complement in having an opportunity to break away . . ." 162 NLRB 387, 392 (1966). Where, as here, the record is devoid of evidence that any employee is inadequately represented, Local 1302 cannot prevail by asserting that it has been given an inadequate opportunity to represent them.

C. The MTC Did Not "Concede" the Carpenters' Separate Identity

As the MTC pointed out in its Request for Review, the Regional Director incorrectly stated the MTC conceded *Mallinckrodt*'s separate-identity factor in its post hearing brief. Int.'s Request at 20, n.8. In its opposition to the Request for Review, Local 1302 goes further, claiming MTC is barred from raising the issue. Opp'n at 33.

As the MTC has already explained, the term "separate identity" has legal significance in the context of craft severance cases. Specifically, it involves whether the petitioned for unit "possesses such a distinct homogeneity and such diverse interest of its own as to override the broader community of interest which it shares with the others in the existing unit with whom it has so long been associated for purposes of collective bargaining." *Holmberg, Inc.*, 162 NLRB 407, 410 (1966). In considering *Mallinckrodt*'s separate identity factor, the Board looks at the community of interest shared between the petitioned-for classifications and others in a historical bargaining unit with respect to, *inter alia*, terms and conditions of employment, interchange of job duties, departments, supervision, and work locations. Int.'s Request at 20-21 (citing cases). The record establishes that Intervenor vigorously disputed the petitioned-for unit's separate identity with respect to all of these factors. It did so again in its post-hearing brief, *see* Int.'s Post Hearing Brief at 7, 15, 16-17, 21-22, and its Request for Review. Int.'s Request at 20-23.

Under the Rules and Regulations, the Request for Review may raise any issue timely presented to the Regional Director. Where review has been granted, the Board will consider the entire record in the light on the grounds relied on for review. 29 C.F.R. § 102.67(j). The Intervenor clearly presented and preserved all of its arguments related to the petitioned for employees' separate identity – or more accurately, the lack thereof. Accordingly, the issue is squarely before the Board for its review.

III. CONCLUSION

For the foregoing reasons, as well as all of the arguments raised in the MTC's Post Hearing Brief and its Request for Review, the Intervenor respectfully requests that the Board dismiss the petition to sever the petitioned for classifications from the existing bargaining unit.

Respectfully submitted,

DATED: September 11, 2014

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Intervenor's Brief on Review

Case 01-RC-124746

ATTACHMENT A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
ELECTRIC BOAT CORPORATION,	)	
	)	
Employer,	)	
	)	
and	)	Case No. 1-RC-124796
	)	
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1302,	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
METAL TRADES COUNCIL OF NEW LONDON COUNTY, AFFILIATED WITH AFL-CIO,	)	
	)	
Intervenor	)	
	)	

REQUEST FOR REVIEW OF INTERVENOR MTC OF NEW LONDON COUNTY

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Dated: July 21, 2014

TABLE OF CONTENTS

TABLE OF AUTHORITIES

NLRB DECISIONS

REGULATIONS

OTHER SOURCES

I. INTRODUCTION

On June 26, 2014, the Regional Director for NLRB Region 7[1] directed an election severing a 70-year old, certified bargaining unit of all production and maintenance employees employed by the Electric Boat Company ("Electric Boat" or "the Employer") at its shipyard in Groton, Connecticut. Decision and Direction of Election ("D&D") at 2. The Region carved out a craft unit consisting of seven job classifications: carpenters, checkers, radiographic linemen, carpenter-divers, joiners, joiner-models, and joiner-upholsterers (collectively, "carpenters"). These classifications account for approximately two hundred and twenty employees out of the pre-existing unit of over two thousand and two hundred employees. The Region took this action based on a representation petition by the United Brotherhood of Carpenters and Joiners of America, Local 1302 ("Local 1302" or "Petitioner"). (E. Exs. 2, 4).[2] In directing an election, the Region rejected the positions of both parties to the long-standing collective bargaining relationship covering these employees: the Employer and the collective bargaining representative, Metal Trades Council of New London County ("MTC" or "Intervenor").

For the reasons set forth below, the Board should grant Intervenor MTC's request for review of the Regional Director's conclusion that "petitioner has satisfied all but one of the criteria set forth by the Board with respect to when severance is appropriate." D&D at 2. As explained below, the Region ignored longstanding Board precedent (including the case establishing the severance criteria, *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966)). The application of that precedent leads inevitably and unequivocally to the conclusion that the

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[1] This case originated in Region 1; the case was transferred to Region 7 for decision writing purposes only. Decision and Direction of Election at 1, n.2.

[2] Transcript citations are noted by the witness name and page number where applicable. Exhibits are designated as "B. Ex." for Board exhibits, "E. Ex." for Employer exhibits, "P. Ex." for Petitioner exhibits, "I. Ex." for Intervenor exhibits, and "J. Ex." for joint exhibits.

Petitioner failed to satisfy the "heavy burden which *Mallinckrodt* places on the party seeking severance." *Kaiser Foundation Hospitals*, 312 NLRB 933, 935, n.15 (1993). In addition to departing from the governing Board precedent, the Regional Director made critical errors of fact in reviewing, or overlooking, parts of the record in this case. Accordingly, the MTC respectfully requests that the Board reverse the Regional Director's Decision and Direction of Election and dismiss Local 1302's representation petition.

II. STATEMENT OF FACTS

Electric Boat Corporation assembles, tests and repairs submarines for the United States Navy at its shipyard in Groton, Connecticut. (Alu 39-41.) The Groton shipyard spans about 118 acres, including numerous docks on the water, construction and work areas, warehouses, a machine shop, a testing facility, and a training center. (Alu 33-36.)

A. Bargaining History

The employees who build and repair submarines, as well as maintain the shipyard, have been part of a single, shipyard-wide, production and maintenance bargaining unit since 1945. (J. Ex. 1, p. 1.) The original bargaining agent was the American Federation of Labor (now the AFL-CIO), which the Board certified as the exclusive bargaining representative on June 12, 1945. The Board amended the certification in 1979 to substitute the MTC for the AFL-CIO. (B. Ex. 2.)

The MTC's membership does not consist of employees directly; rather, it consists of affiliated Local Unions, which bargaining unit employees are able to join. Nevertheless, the MTC is the exclusive certified bargaining representative for all of the production and maintenance employees working at Electric Boat, regardless of their local union affiliation or trade. (Alger 122-23; DelaCruz 303-04, 339; J. Ex. 1 at Preamble, Art. I.) The MTC bargains

for all unit employees and has complete authority, as the certified bargaining agent, to negotiate and administer the Collective Bargaining Agreement ("CBA") for all employees in the existing unit, including the petitioned for employees. (Alger 130-31, DelaCruz 306, 348.) No other labor organization or entity, including Local 1302, has this authority. Any and all agreements outside of the CBA must be negotiated with the MTC, rather than any of its member local unions. (Alger 163; DelaCruz 306; *see also* J. Ex. 1, Mem. of Understanding Nos. 1-81.) While each of the local unions affiliated with MTC work together to come up with proposals, the President of the MTC is the chief negotiator, and the parties to contract negotiations and to the contract are MTC and Electric Boat. (DelaCruz 304; J. Ex. Preamble, Art. I.)

The wages and benefits negotiated by the MTC apply to all employees in the bargaining unit, regardless of job classification or union affiliation. The wage rates for carpenters are identical or comparable with the rates of other bargaining unit members in the other trades, and significantly higher than market levels for carpenter work. (Alger 131-32, 137-39; DelaCruz 352-53; Jt. Ex. 1, Appendix A; E. Exs. 10-11.) All work rules, seniority, holidays, vacations, retirement benefits, working hours, overtime, sick leave, insurance, and discipline standards are applicable to all bargaining unit employees regardless of their local union membership. (DelaCruz 353.)

Each local union affiliated with the MTC is entitled under the CBA to have a designated steward or stewards, who are either appointed or elected by the local union. (Jt. Ex. 1, Art. IV Sec. 1 at 4; DelaCruz 324.) Regardless of their local union, stewards are generally enforcing the same wages, hours, and terms and conditions of employment which exist across the MTC bargaining unit. (DelaCruz 352-53.) As set forth above, any changes to terms and conditions must be negotiated by the MTC. (Alger 163; DelaCruz 306,)

A single grievance and arbitration procedure applies to all employees and constituent local unions. (Jt. Ex. 1, Art. VI, at 7.) Some issues are resolved through the interaction of shop stewards and supervisors without filing a written grievance. (Alger 125-26; Tardif 181.) If the dispute is not resolved informally, the employee involved or one of the local unions can file a written grievance known as Step 1. Once a grievance progresses to Step 2, however, the MTC assumes complete control of both the grievance and arbitration process and decides if the grievance will continue to arbitration. (DelaCruz 307; Jt. Ex. 1 Art. VI.) The MTC represents all employees in arbitrations and normally pays the associated costs. (Alger 127.) In the most recent MTC arbitration, the MTC successfully overturned a suspension issued against an employee in one of the petitioned for classifications. (Alger 137-38; E. Exs. 10-11.)

The Employer and MTC have a stable and productive bargaining relationship. MTC President DelaCruz meets with Electric Boat's Director of Operations weekly, and its President every couple of weeks. (DelaCruz 305.) Through this dialogue, "most" union issues are resolved amicably. (DelaCruz 341.) In the almost 70 year history of the MTC-Electric Boat bargaining relationship, there have been only two strikes, one in 1957 and one in 1988. (Alger 126; DelaCruz 342.) There has also been little, if any, friction between the designated local unions within the MTC as to work jurisdiction or other issues. (Alu 83-84; DelaCruz 341.)

The existing bargaining unit in this case – a single unit for all production and maintenance employees – is consistent with the historical pattern of collective bargaining in the naval ship building industry. The Navy itself initiated this pattern, both at its own shipyards and shipyards operated by private contractors, because it was the best way to assure continuous production and fewer distractions while manufacturing ships vital to our national defense. (Barry 366-67.) This pattern is virtually universal among the East Coast shipyards, including the

Portsmouth, New Hampshire Naval Shipyard (I. Ex. 5); Bath Iron Works, Bath, Maine (I. Ex. 9); Norfolk Naval Shipyard, Portsmouth, Virginia (I. Ex. 6); and Northrup Grumman Ship Systems, Avondale, Louisiana.[3]

B. The Petitioned for Employees

In this case, Local 1302 filed a representation petition seeking to sever seven specifically identified classifications from the existing, production and maintenance MTC bargaining unit. The classifications are carpenters, joiner checkers, radiographic lineman, carpenter divers, joiners, joiner-models and joiner upholsterers. The involved employees are generally members of Carpenters Local 1302. (E. Ex. 2; DelaCruz 303, 348.) The work they perform varies. Among their principal tasks is manufacture and installation of Mold in Place ("MIP"), a hull covering which is either poured in liquid form into molds or is a tile application. (Castro 519-20.) They also install another exterior hull covering, SHT tile, which is generally used in overhaul and repair work. (Castro 519.) They install sound dampening tile throughout the ships' ballast tanks, internal and external, install deck covering, and perform upholstery work. (Castro 521-523.) They assist the other trades in performing their work on the submarine by setting dimensions and lines, and assembling work platforms, also known as "stages," in and around the submarine. (Castro 517-18, 523-24.) Carpenter-Divers perform underwater work around submarines under construction and repair. (Alu 70.)

Electric Boat hires employees into the petitioned for classifications without prior certifications, qualifications, or experience. (Alu 59-60.) All new employees in the production

[3] Petitioner introduced evidence of a few shipyards, primarily on the West Coast, in which carpenters had pre-existing, separate bargaining units, prior to the existence of the Metal Trades Councils, and retained those separate units over time. (Burleigh 288-300, 611-31.) These examples are clearly distinguishable from the facts in this case, which involves an East Coast shipyard with no history of separate bargaining units among the production and maintenance employees.

and maintenance unit go through the same five-day orientation program. (Kniss 266.) Employees in the petitioned for classifications, with the exception of divers, then go through another 46 hours of specific job training, broken into segments. (Kniss 267-70, Castro 532-33.) Of the nine segments listed in the Carpenter New Hire Training List, four are required by at least three other trades. (E. Exs. 15, 23, 37, 46, 49.)

Most of the petitioned for employees are assigned to Department 252, the carpenter department. (E. Ex. 4.) These employees are overseen by the Carpenters/Painters Manager of Operations, and mainly are supervised by the general foreman and supervisors in Department 252. (P. Ex. 2.) However, at times they are also supervised by general foremen and supervisors outside Department 252 in "mixed crews" of carpenters and painters. (Alu 50-51; Castro 516.) Approximately ten of the petitioned for employees are assigned to the facilities, transportation, and training departments, where they are commonly supervised with bargaining unit employees from other trades. (E. Ex. 4; Alu 54-56.)

Although they are generally assigned to one department, the petitioned for employees have no central work location. They perform their work across the shipyard in a variety of areas, or work directly on the ship. (Alu 52-53, Kniss 253-257.) They do not have separate break rooms or rest rooms, and their lockers are spread out in at least six different locations. They have no dedicated tool room; if necessary, they use one of two tool rooms shared with bargaining unit employees of other trades. (Alu 52-53, 65.)

The petitioned for employees often work alongside, and interact with, other employees in the MTC unit on the interior and exterior of submarines. (Alu 76, Kniss 598-99.) Carpenters assist other trades by building and adjusting staging for all trades, and by setting dimensions and lines in order for the other trades to establish starting points for their work. (Kniss 543.)

Carpenters work alongside painters, for cosmetic work in bunker areas or in connection with an MIP application on the hull, which is painted by painters after installation. (Alu 78.) The petitioned for unit works with the steel trades to remove combustible materials. Additionally, in working on the exterior of the hull, they coordinate with the steel trades to install metallic and non-metallic coverings. (Haugeto 492-94, 509; Castro 543.) The carpenters also rely on steel workers to put up the railway or framework for the deck tile that the carpenters install. (Haugeto 493-94.) Carpenter divers go in the water to make repairs with instructions from electricians, machinists, or other trades on what repairs are to be made. (Alu 72.)

Pursuant to CBA Article XI, and MOU No. 11, Electric Boat has discretion to assign work within the same job groups ("flexibility") and across different job groups ("versatility"). Flexibility is the ability to assign work to different occupational codes within a trade, and the Employer uses it routinely. (Malone 227.) Versatility is the temporary assignment of work to different trades, which can be utilized "to enhance productivity and reduce disruption caused by workload fluctuation" for up to twelve weeks. (Jt. Ex. 1, MOU No. 11.) Employers assigned through versatility are trained (if necessary) and then supervised by the department to which they have been assigned. (Alu 82.) Alu explained that versatility "keeps us from having to lay people off." (Alu 80-81.)

Numerous examples of versatility were presented at the hearing. For example, in summer 2013 the Employer was able to avoid laying off twenty-five carpenters by assigning them to work as painters for ten to twelve weeks. (Castro 539-40.) On another occasion, the Employer trained approximately twenty carpenters as painters, then assigned them to perform painters' work at the Norfolk Naval shipyard. (Alu 81.) Also, about two years ago, Electric Boat sent ten to fifteen employees from the electrical trades to perform carpenter MIP grinding work

for approximately two months, working twelve hour days. (Canavan 586.) Steel trades and electricians assist the carpenters in shooting studs under single-shift versatility assignments. (Haugeto 491; Canavan 587), and carpenters routinely assist the laborers with snow removal work. (Castro 539, 541-42.) The inside machine shop has used carpenters to help build boxes and move equipment. (Monaco 447.) During the winter of 2014, carpenters were assigned to the machinist department to assist with maintenance and modernization projects. (Monaco 448.) Overall, the inside/outside machinist manager testified that the machinists utilize the petitioned for employees in versatility assignments about a dozen times per year, ranging in length from one shift to a few weeks and involving up to six or more employees. (Monaco 449, 455-56, 461.)

Finally, since January 2011, twenty one employees in the petitioned for classifications have permanently moved to other trades. In addition, eight employees from other trades have permanently moved into the petitioned for classifications.

C. The MTC's Continued Representation of the Petitioned for Employees Despite Carpenters' Disaffiliation from the AFL-CIO and the Termination of Affiliation with Local 1302

The underlying reason for this craft-severance petition has its origins in the decision of the United Brotherhood of Carpenters and Joiners of America ("UBC") to disaffiliate with the AFL-CIO in March 2001. (I. Ex. 4, p. 1).[4] After disaffiliating from the AFL-CIO, the UBC forfeited its eligibility, as well as its affiliates' eligibility to participate within the Metal Trades Department ("MTD") and the MTD's affiliated councils. *Id.* The MTD's Constitution provides that a local union must be part of a national or international union affiliated with the AFL-CIO in order to be affiliated with a metal trades council, such as the MTC. *Id.* p. 6. In approximately

[4] The Board has previously noted the Carpenters' disaffiliation from the AFL-CIO in March 2001. *See Woods Quality Cabinetry Co.*, 340 NLRB 1355, n.1 (2003).

2004 or 2005, the MTD directed that the UBC and all of its affiliates were no longer permitted to participate in either the MTD or any of its councils.

After this directive, litigation ensued and ultimately the MTD and the UBC entered into the Solidarity Agreement. This Agreement afforded the UBC and its affiliates certain rights that otherwise flow from affiliation with the MTD and its councils. (P. Ex. 1.) These rights include the right to select stewards (which, as provided in the Solidarity Agreement, served as MTC stewards, not carpenter stewards), the right to dues checkoff and the right to participate in the affairs of metal trades councils (including but not limited to the right to participate in collective bargaining and grievance adjustment). *Id.* The Solidarity Agreement contained a provision permitting either party the right to terminate the agreement with sixty (60) days written notice. *Id.* In 2011, the MTD exercised that right and the Solidarity Agreement was terminated effective August 1, 2011. (P. Ex. 1).

Over the more than two and one-half years that have passed since the termination of the Solidarity Agreement, the MTC has continued to serve as the exclusive bargaining representative of the entire production and maintenance unit, including the petitioned for employees. The petitioned for employees continue to enjoy the same terms and conditions of employment that were negotiated by the MTC in the collective bargaining agreement. (P. Exs. 1 & 5; Alger 161; Delacruz 310-22.) While Local 1302 has lost the right to appoint stewards, because it is no longer affiliated with the MTC, the MTC will delegate that responsibility to other local unions who are affiliated with the exclusive bargaining representative. The carpenter classifications will continue to have the same number of shop stewards – five – regardless of their final local union designation. (Alger 128; DelaCruz 314-15.) Those stewards will continue to represent the petitioned for employees as agents of the MTC. The five Local 1302 stewards will likewise

remain bargaining unit members, and may remain stewards, representing the same job classifications as part of their reassigned local union. (DelaCruz 347.)

Furthermore, the MTC continues to represent the petitioned for employees in bargaining negotiations, despite Local 1302's disaffiliation. The MTC proposed a wage increase for carpenter-diver pay during the most recent round of contract negotiations. (DelaCruz 356.) The petitioned for employees remain eligible to vote on contract ratification, and participated in the recent strike authorization vote even though Local 1302 itself was not eligible to participate.[5] (DelaCruz 315-17.) The petitioned for employees may continue to run for office within a local union, or within the MTC, if they choose. (DelaCruz 351-52.)

III. STANDARD OF REVIEW & GOVERNING PRECEDENT

A. Standard of Review

Pursuant to the Board's Rules and Regulations, the Board will grant a request for review of a Regional Director's Decision and Direction of Election if, among other things, "a substantial question of law of policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent," or because "the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the

[5] Contract negotiations were ongoing at the time of hearing in this case. Intervenor requests that the Board take administrative notice that the parties reached agreement on a new contract, including significant wage increases and increased employer pension contributions, in late April 2014. *See* Jennifer McDermott, *EB, Union, Agree to Five Year Pact*, THE HARTFORD COURANT, April 24, 2014 (available at http://articles.courant.com/2014-04-24/business/hc-electric-boat-union-contract-0425-20140424_1_union-members-eb-union-agree) (last visited July 18, 2014). The employees in the petitioned-for classifications participated in the ratification vote. They are covered by the new agreement, and enjoy the same wage and benefit increases as all of the other trades in the unit. Should the Board grant the Intervenor's Request for Review, the Intervenor plans to request that the Board reopen the record for the limited purpose of admitting the new collective bargaining agreement.

rights of a party." 29 C.F.R. § 102.67(c). As demonstrated below, the Regional Director departed from longstanding Board precedent when she found that Local 1302 satisfied the requirements for severing seven classifications from a production and maintenance unit that has been in existence for over 70 years. This substantial error justifies the MTC's request for review and warrants reversal of the Regional Director's determination.

B. Applicable Legal Standards

Board law regarding craft severance has been well-established for almost fifty years. In *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966), the Board created the analytical framework to determine whether a group of employees integrated into an existing bargaining unit could be "severed" from that existing unit to form their own, separate bargaining unit. In *Mallinckrodt*, the Board explained that:

> Underlying such determinations is the need to balance the interest of the employer and the total employee complement in maintaining the industrial stability and resulting benefits of an historical plantwide bargaining unit as against the interest of a portion of such complement in having an opportunity to break away from the historical unit by a vote for separate representation.

Id. at 392. The Board established the severance standard in *Mallinckrodt* specifically because the prior standard – as set forth in *American Potash & Chemical Corporation*, 107 NLRB 1418 (1954) – failed to take into account the interests of the bargaining unit as a whole, "whose unit of association is broken and whose collective strength is weakened by the success of the craft or departmental group in pressing its own special interest." *Id.* at 396.

The Board's severance standard, as set forth in *Mallinckrodt*, begins with the threshold question of whether the proposed unit is a craft unit: in other words, whether it consists of a distinct and homogeneous group of craftsmen or a functionally distinct department. *Id.* at 397, n.14; *see also Metro. Opera Ass'n*, 327 NLRB 740, 754 (1999). If the proposed unit would be appropriate as a craft unit, the Board then goes on to consider additional factors to determine

whether severance is warranted. These factors include, but are not limited to: the proposed unit's degree of integration into the employer's production processes; the extent to which the petitioned for unit has maintained a separate identity in the workplace; the history of the certified union's representation of the petitioned for group; the labor relations history at the location involved; and the pattern of collective bargaining in the industry generally. *Mallinckrodt*, 162 NLRB at 397. The party seeking severance bears the "heavy burden" of establishing that severance is appropriate under the circumstances. *Metro. Opera Ass'n*, 327 NLRB at 752 (citation omitted).

Based on this framework, "severance under *Mallinckrodt* has been granted sparingly by the Board." *Id.* In most cases, the Board is reluctant to disrupt an established bargaining relationship because of the important "interests of all employees in continuing to bargain together in order to maintain their collective strength, as well as the public interest and the interests of the employer and the plant union in maintaining overall plant stability in labor relations and uninterrupted operation of integrated industrial or commercial facilities...." *Mallinckrodt*, 162 NLRB at 392.

IV. ARGUMENT

The Region's determination in this case that the long-standing bargaining unit must be severed is completely at odds with this framework. First, the Regional Director applied the wrong legal standard for a craft severance case, relying not on the *Mallinckrodt* factors but rather on a collection of factors in non-severance cases, where unions were seeking to hold elections among employees who had been previously unrepresented. Second, to the extent the Regional Director cited to the *Mallinckrodt* factors at all, she misinterpreted and misapplied Board precedent with respect to functional integration of the petitioned for employees in the production process, the extent to which the employees maintained a separate identity, and the collective

bargaining history. Finally, the Regional Director made critical factual errors in reviewing or ignoring parts of the record in this case.

As applied to the evidence presented at the hearing, the *Mallinckrodt* factors compel the conclusion that the unit should not be severed. Even assuming the petitioned for employees comprise a craft unit,[6] the record at hearing clearly established that the employees are directly involved in and highly integral to the Employer's production process, have not maintained a separate identity in the workplace and indeed share an overwhelming community of interest with the other employees in the bargaining unit, and have been well-represented by the MTC within the existing bargaining unit. Accordingly, Board precedent dictates that proper disposition of this matter would have been to dismiss the petition.

A. The Region's Decision Is Predicated on the Wrong Legal Standard for a Craft Severance Case

The legal framework governing petitions to sever an existing bargaining unit is fundamentally different than for petitions involving the initial establishment of an appropriate craft unit. In the latter context, the determination of appropriateness is limited to whether the proposed unit consists of a craft or departmental group and whether the petitioning union has traditionally represented that craft. *Anheuser-Busch, Inc.*, 170 NLRB 46 (1968); *E.I. Dupont deNemours & Co.*, 162 NLRB 413 (1966). The Board in *Mallinckrodt* considered and explicitly rejected these two factors as sufficient to justify severance, explaining:

> These tests . . . place in the scales of judgment the interests of the craft employees. However, they do not consider the other employees and thus do not permit a weighing of the craft group against the competing interests favoring continuance of the established relationship. Thus, *by confining consideration solely to the interests favoring severance*, [these factors] preclude the Board from discharging

[6] The Intervenor has not challenged the designation of the carpenters as a craft, albeit they do not require as much training as other trades and obtain most of that training on the job. MTC's Post Hearing Brief at 24-25.

> its statutory responsibility to make its unit determinations on the basis of all relevant factors, including those factors which weigh against severance.

Mallinckrodt, 162 NLRB at 396 (emphasis added). In other words, a petition to sever a group of employees which might constitute an appropriate craft unit in the absence of any bargaining history is not sufficient, absent the other *Mallinckrodt* factors, to dismantle an existing unit with a stable bargaining relationship. *Dow Chemical Co.*, 202 NLRB 17, 20 (1973); *see also Goodyear Tire & Rubber*, 165 NLRB 188, 190 (1967).

The Board has repeatedly denied severance petitions, notwithstanding the craft or craft-like status of the petitioned for unit, where other *Mallinckrodt* factors weigh against severance. *See, e.g., Kaiser Found. Hospitals*, 312 NLRB 933 (recognizing that petitioned for employees constitute a homogeneous craft or departmental unit, but rejecting request to sever because of common terms and conditions of employment and substantial bargaining history in larger unit with adequate representation); *Bendix Corp.*, 227 NLRB 1534 (1977) (denying petition to sever platers, despite craft status and somewhat separate identity, because some of their work is integrated with non-platers, they share terms and conditions of employment, and they have been adequately represented by the existing bargaining representative); *Allen Bradley Co.*, 168 NLRB 15 (1967) (finding that petitioned for unit of electricians are craftsmen but denying petition to sever because they are integrated into production, many of them work closely with other employees, and they have been adequately represented by the existing representative); *Allied Chemical Corp.*, 165 NLRB 235 (1967) (recognizing proposed unit of carpenters as a craft, but rejecting severance because they work jointly with other personnel, their work is important to continuous flow of production processes, and they have a twenty five year history in established collective bargaining unit).

Inexplicably, the Region's Decision fails to follow the *Mallinckrodt* and its progeny, instead relying upon the appropriate bargaining unit analysis developed in initial representation proceedings, which involve the appropriateness of a craft unit where no bargaining history on a more comprehensive basis exists. Of the seven factors considered by the Region, four of them relate to the threshold determination whether the proposed unit is a craft unit – "whether the employees sought to be severed participate in a formal training or apprenticeship program; . . . whether the duties of the petitioned for employees overlap with the duties of the excluded employees; whether the Employer assigns work according to need rather than along craft or jurisdictional lines; [and] whether the petitioned for employees share common interest with other employees including wages, benefits and cross training." D&D at 4. This language is identical to the test articulated in *Burns & Roe*, a non-severance craft unit case where no bargaining history existed. *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994).[7]

Mallinckrodt requires a balancing of "all considerations relevant to an informed decision" regarding a petition to sever. 192 NLRB at 397. By artificially dividing one factor, the threshold question of craft status, into four, the Region stacked the deck in favor of severance, abandoned the *Mallinckrodt* framework, and ignored the "heavy burden" Board law imposes on Petitioner to obtain craft severance from a long-established bargaining unit. *Metro. Opera Ass'n*, 327 NLRB at 752. Even if this were the only legal or factual error in the Regional Director's decision – and, as shown below, there are others – this departure from Board precedent is a sufficient basis on which to grant review.

[7] Tellingly, the Region's Decision relies far more on initial representation cases, such as *Burns & Roe*, than Board decisions involving severance, like *Mallinckrodt*. *See generally* D&D at 9-11, 14-15, 19-20, 24-27.

B. The Region Misinterpreted and Misapplied Board Precedent on the Functional Integration of Employees in the Production Process

Under Board law, a high level of production integration and interdependence weighs heavily against severance. The Board described this consideration in *Mallinckrodt* as whether "the continued normal operation of the production processes is dependent on the performance of the assigned functions of the employees in the proposed unit." *Mallinckrodt*, 162 NLRB at 397. The Board has consistently rejected petitions for craft severance where the work of the petitioned for employees "is important to the continuous flow of production processes." *Allied Chemical*, 165 NLRB at 236. Indeed, in *Mallinckrodt* itself, the Board rejected a petition to sever notwithstanding that the petitioned for instrument mechanics had separate supervision, wore different colored hard hats, had separate and highly specialized tools, and performed only their own work, *id.* at 390. The Board explained that the Employer produced uranium metal for the military by means of "a highly integrated continuous flow production system;" the instrument mechanics' work on the instrument controls in the system is "intimately related to the production process itself;" and their work must be performed "in tandem with the operators of the controls." *Id.* 398-99. Accordingly, the Board found that any separate community of interest the mechanics enjoyed by virtue of their separate training, supervision, and work was subsumed in their community of interest with the larger bargaining unit due to, *inter alia*, "the high degree of integration of the employer's production processes, and the intimate connection of the work of these employees with the actual uranium metal-making process itself." *Id.* at 399.

Since *Mallinckrodt*, the Board has continued to recognize functional integration as a critical factor against severance. In *La-Z-Boy Chair Co.*, 235 NLRB 77 (1978), for example, tool-and-die makers sought severance from an overall production and maintenance unit at a furniture manufacturer. The Board rejected severance despite the petitioned for employees' craft

status, separate work location, separate tools, separate and non-production type job duties, separate supervision, lack of interchange, and minimal work contacts with other employees. As the Board explained, these differences do not "diminish the vital rule of the tool and die employees in the Employer's production process. . . . [The] process is functionally dependent upon the work of tool-and-die employees whose primary job is to assure that new and used dies and tools needed for production are available and in proper working order." *Id.* at 78. *See also Dow Chemical Co.*, 202 NLRB at 19-20 (relying on functional integration to reject petition to sever despite separate skills and supervision); *Allen-Bradley*, 165 NLRB 235 (same).

Finally, in *Walker Boat Yard*, 273 NLRB 309 (1984), a case remarkably similar on its facts to this one, the Board rejected a petition to sever diesel shop employees from the remaining employees engaged in the repair and overhaul of boats and barges. The diesel shop employees had separate uniforms, work locations, supervision, training and work assignments. *Id.* at 310. Nevertheless, the Board found severance inappropriate because the employees worked together to repair the vessels, albeit performing various repair functions: drydock employees repaired the hull, diesel shop employees worked on the engines, machine shop employees repaired parts of the tail and rudder shafts, and electrical shop employees disconnected and rewired the boat generators. The Board noted that other classifications assisted the diesel shop employees in preparing to perform their repair functions by, *inter alia*, removing engines from the boat for repair, or removing obstructions which block access to the engines. It concluded:

> In the context of the overall boatyard operation, the work of the diesel shop employees is not functionally distinct. Rather, we conclude that the diesel shop employees' work is necessarily integrated with and dependent on work performed by other boatyard employees in the [larger, historical] unit.

Id. at 309.

The undisputed evidence presented at the hearing shows that the petitioned for employees are highly integrated into Electric Boat's production processes assembling, testing, and repairing submarines for the United States Navy. Indeed, the Regional Director acknowledged that the carpenters work closely alongside other trades in the existing bargaining unit, in close proximity on the ships. For example, carpenters adjust staging while machinists and shipfitters set up wire installation; and carpenters, pipefitters, electricians, and ventilation workers all make distinct tie-ins between modules and the hull. D&D 15. Carpenters work with electricians with respect to installation of Mold in Place ("MIP"), the ship-covering method "which comprises a large percentage of the carpenters' work," *id.* at 7; once the carpenters install the MIP, the electricians work on special-shielding installation. D&D 15. The Regional Director also conceded that the carpenters rely upon and are relied upon by other trades; they also assist and are assisted by other trades. For example, steel workers rely on linesman and carpenters to help position large structures into the proper location and remove combustible materials, and carpenters rely on steel workers to put up the railway or framework for the deck tile that the carpenters install. *Id.* Carpenter divers go in the water to make repairs with instructions from electricians or machinists on what repairs are to be made. *Id.* 16. Nevertheless, the Regional Director concluded that because the petitioned for employees "have their own department, are separately supervised the majority of the time, and perform their own work," D&D at 19, they are somehow not functionally integrated with the submarine production and repair process.

Once again, the Regional Director ignored the entire body of Board law on severance units and, without explanation, relied solely on cases involving initial establishment of a unit, where no bargaining history exists and the only burden upon a petitioner is to show an appropriate unit. *See* D&D at 19-20. In addition to *Burns & Roe*, the Regional Director relied

on *MGM Mirage,* 338 NLRB 529 (2002), another non-severance case. In that case, the Board reasoned "[w]e are not convinced that . . . the integrated nature of the Employer's operation . . . negate the craft status of carpenters so as to require that they be included in a larger engineering department unit." *Id.* at 532; *see also Burns & Roe, supra* at 1309 (acknowledging some facts favor finding a combined unit appropriate, including that the electricians had "some contact" with employees outside the craft, but noting that "a petitioned for unit need only be an appropriate unit."). This analysis is fatally incomplete in the craft severance context, which requires the Board to weigh not only the interests of the craft employees, but also "the competing interests favoring continuance of the established relationship." *Mallinckrodt,* 162 NLRB at 396.

When all of the interests in this craft severance case are properly accounted for, Board law is clear: the fact that the petitioned for employees have special skills or otherwise perform distinct duties does not undermine their high level of integration in Electric Boat's business producing submarines for the U.S. Navy. The carpenters' work is intimately related to that production, and this fact weighs heavily against the petition to sever them from the existing, stable, bargaining unit. The Regional Director's conclusion to the contrary is clearly erroneous and warrants reversal of her decision.

C. The Region Improperly Disregarded the Overwhelming Community of Interest and Lack of Separate Identity[8] of the Petitioned For Employees

While craftsmen may establish a "separate identity" by virtue of their skills, those skills are not sufficient to justify severance unless the petitioned for unit "possesses such a distinct homogeneity and such diverse interest of its own as to override the broader community of interests which it shares with the others in the existing unit with whom it has so long been associated for purposes of collective bargaining." *Holmberg, Inc.*, 162 NLRB 407, 410 (1966).

Where terms and conditions of employment for petitioned for employees are substantially identical to other employees in the existing bargaining unit, this fact weighs heavily against a finding of "separate identity." *See, e.g., Kaiser*, 312 NLRB at 935-36 (relying on common terms and conditions of employment as a factor against severance); *see also Holmberg*, 162 NLRB at 409 (same). Likewise, temporary and permanent interchange of job duties or classifications also undermines a distinct community of interest necessary for craft severance. *See, e.g., Animated Film Producers Ass'n*, 200 NLRB 473, 74 (1972) (denying severance where interchange of employees "during slack periods. . . . This modest degree of interchange suggests a certain community of interest [and] also portends some unnecessary inconvenience should these writers have to transfer in and out of bargaining units every time they accept a different assignment"); *see also Goodyear Tire & Rubber Co.*, 165 NLRB 188, 189 (1967) (same). Finally, overlapping work locations, departments, and supervision between the petitioned for

[8] The Regional Director incorrectly stated the MTC conceded the separate-identity factor in its post hearing brief. D&D at 2, n.7. In fact, the MTC has always vigorously disputed the petitioned-for unit's separate identity with respect to its working conditions, locations, departments, supervision, and interchange. In its post-hearing brief, MTC acknowledged the undisputed fact that the carpenters' local union, like all of the local unions which are members of MTC, participates in the existing pattern of representation by handling grievances for carpenters at Step One and assisting in daily contract administration. (MTC Post-Hearing Brief at 25); (Alger 126-27; Jt. Ex. 1, p. 8). The local union's participation in representation is addressed below; however, it is irrelevant to the separate identity analysis.

employees and others in the existing unit precludes a finding of overriding homogeneity justifying severance. *See, e.g., Bendix,* 227 NLRB at 1537 (petitioned for platers geographically dispersed throughout ER and share locations with other classifications); *Allen Bradley*, 168 NLRB 15 (petitioned for unit of electricians "essentially" supervised by electricians but also directed in their work by production supervisors); *Holmberg, Inc.*, 162 NLRB at 408-10 (citing employee interchange and overlapping duties based on "manpower requirements" as a reason to deny severance).

As detailed in the statement of facts in Section II above, all of these indicia are present in this case. The petitioned for employees have virtually identical terms and conditions of employment as the other employees in the bargaining unit; even their wage rates are identical or comparable with the rates of other bargaining unit members, and substantially higher than market levels for carpenter work. Through the Employer's regular use of versatility, there is temporary interchange of job duties between the carpenters and other trades, and the record reflects that in the last three years, more than ten percent of the unit has changed due to permanent interchange with other trades within the existing unit. Carpenters' work locations and departments overlap with other trades in the unit, and supervision also overlaps from time to time. On this record, it is clear that the petitioner cannot meet its burden to show the petitioned for unit "possesses such a distinct community and diverse interest of its own as to override the broader community of interest which it shares with others in the existing unit." *Holmberg*, 162 NLRB at 410.

Once again, however, the Regional Director failed to rely on craft severance cases and instead turned to non-severance law to justify her holdings to the contrary. With respect to terms and conditions of employment, she found that notwithstanding the overwhelming commonalities among all employees in the existing unit, the petitioned for employees have "distinct interests"

from the other bargaining unit employees because they have separate overtime lists, use certain tools to perform their job duties, and wear yellow hard hats. D&D at 26. Essentially, she concluded that where petitioned for employees have *any distinction* in their terms and conditions of employment, they can be carved out from an existing group of employees. Once again, the Regional Director adopted the standard in *Burns & Roe* as the basis for her decision:

> We are not unmindful that there are some factors favoring only a combined unit appropriate . . . However, a petitioned for unit need only be an appropriate unit. Further, the Employer has not shown that the lines of separate craft identity have been so blurred as to preclude a separate . . . unit.

D&D at 26 (quoting *Burns and Roe*, 313 NLRB at 1309). As discussed throughout, this standard is inapplicable to, and fundamentally at odds with, craft severance situations. In a craft severance case, the community of interest within the petitioned for employees is not in dispute – it exists by virtue of their training and special skills as craftsmen. The obvious distinction in craft severance cases is that the community of interest among the petitioned for employees must be *weighed against* the broader community of interest between those in the petitioned for unit and the existing bargaining unit as a whole. By ending her analysis at the halfway mark – whether the petitioned for employees share a community of interest among themselves – the Regional Director failed to perform the analysis required in craft severance situations. Accordingly, her decision must be reversed.

The Regional Director made the same fundamental error of law in analyzing work overlap and exchange, again disregarding craft severance precedent without explanation, and again applying irrelevant law regarding initial establishment of a craft unit. She found "the fact that some non-craft workers performed craft work did not render the craft unit invalid so long as the craft employees 'primarily engaged in the performance of tasks not performed by other employees.'" D&D at 24 (quoting *Burns & Roe*). She applied a percentage-of-time test,

concluding severance is warranted unless the petitioned for employees spend less than half their time performing carpenter work. *Id.* Once again, these principles find no support in craft-severance cases, which proceed on the assumption that the petitioned for unit consists of craftsmen primarily performing work within their craft, but require much more than that to show that the community of interest in the petitioned for unit is so strong that it overwhelms the community of interest within the longstanding bargaining unit.

D. The Region Disregarded Craft Severance Precedent on Adequate Representation and Improperly Speculated on Potential Future Inadequate Representation by the MTC

When pared to its core, the Region's decision to sever a 70 year old bargaining unit is premised on its findings that (1) Local 1302 has "a long history of representing carpenters at the employer," (D&D 5), and, because the local is no longer part of the MTC; and (2) the petitioned for employees' "interests have been neglected," and their "representation will be severely curtailed." D&D 10. Each of these findings, however, is based on the Region's errors, and should be reversed.

As an initial matter, the Regional Director's bare assertion that the Petitioner has "a long history of representing carpenters at the employer," (D&D 5) is wrong as a matter of fact and law. As explained throughout, the MTC is and has always been the exclusive bargaining representative of the production and maintenance unit. The CBA between the MTC and Electric Boat designates local unions, including petitioner, as agents of the MTC for purposes of administrating certain limited aspects of the contract with respect to certain classifications of employees. (J. Ex. 1 at Art. I, Section 1 (permitting each local union to designate stewards to help administer the contract with respect to the classifications within the local union's

jurisdiction); Art. VI (permitting stewards to handle Step 1 of the grievance procedure)). This does not, however, establish the Petitioner as anything more than an agent of the MTC.

In *Houdaille-Duval-Wright Co.*, 183 NLRB 678 (1970), the Board rejected a petition to sever filed by a local union assisting in the administration of the CBA between the employer and the certified bargaining representative. The CBA designated the local union as the agent of the bargaining representative for the limited purposes of (1) administering the contract as to certain job classifications, including, *e.g.*, handling the first three steps of the grievance procedure for the petitioned for classifications, and (2) supplying employees from its hiring hall. *Id.* The Board found the contractual designation of the local union as an agent of the certified representative did not confer representative status on the local. "There was and continues to be a single contract applicable to all employees in all respects except for the wage rates. Thus, all employees enjoyed the same benefits, they worked the same hours, and were paid for overtime at the same rate, and there was a uniform grievance –arbitration procedure for all employees. . . . There can be no such legal status [for the local union] as a representative of employees . . . under the circumstances here." *Id.* at 679. Similarly, in *Metropolitan Opera*, 327 NLRB 740, the Board considered a petition to sever choristers from the unit represented for three decades by the American Guild of Musical Artists ("AGMA"). The petition was filed by the chorus committee, which had a history of negotiating for the choristers' interests. The Board rejected the petition, explaining "although the . . . choristers as a group have negotiated with the Employer, this chorus committee has done so only as an authorized arm of AGMA and not as a separate bargaining representative. Thus, AGMA has permitted the chorus committee to advance the choristers' special interests within the context of AGMA's responsibility to represent the common interests of all unit employees." *Id.*

The analysis in *Houdaille* and *Metropolitan Opera* governs this case. The issue is not, as the Region frames it, whether the petitioned for employees should be able to choose between two established bargaining representatives. Only one labor organization – the MTC – has represented the carpenters in their employment with Electric Boat. To the extent Local 1302 "represented" any employee, it did so as the agent of the MTC. *Houdaille*, 183 NLRB at 679. The issue is, therefore, whether the MTC has adequately represented them.

The Regional Director's answer to this question – that the petitioned for employees' "interests have been neglected," by the MTC "because they are left without their own representatives on the shop floor and at the collective bargaining table" (D&D 10) – is flatly wrong, contradicted by the record and unsupported by Board precedent. The basis for Local 1302's participation within the MTC, *viz.*, the Solidarity Agreement, was terminated over two and one-half years ago. Since that time, the carpenters continue to be represented by stewards according to the formula set forth in the CBA, which is one steward for every 50 employees within the jurisdiction of each local union. (J. Ex. 1, Art. IV.) Accordingly, the carpenter classifications continue to have the same number of stewards – five – based on the number of carpenters in the existing bargaining unit, regardless of their final local union designation. (Alger 128; DelaCruz 314-15). It is further undisputed that some, if not all, of the five individuals who have served as stewards in Local 1302 may remain stewards, even representing the same employees, but in different local unions. (DelaCruz 314-15; 347; 355-358).

Likewise, there is absolutely no evidence that the petitioned for employees have been inadequately represented at the bargaining table. The record is undisputed that the MTC has represented the carpenters not just adequately, but exceptionally well, in the 70 years it has served as the exclusive bargaining representative. The employees at issue receive compensation,

benefits, and paid time off in a manner virtually identical to all other MTC-represented employees. Their wages are above-average market wages. They have regularly accessed the grievance procedure, including the steps where they are represented by the MTC. None of these things have changed as a result of Local 1302's disaffiliation. MTC remains bound by its duty of fair representation to represent all of the employees in the bargaining unit. As discussed *supra*, the MTC has fully and fairly represented the petitioned for employees during the most recent round of negotiations, and obtained a favorable outcome for all employees, including the petitioned for classifications.

Indeed, the Regional Director did not identify a single deficiency in representation at the bargaining table either before or after Local 1302's disaffiliation. Rather, she relied on Petitioner's unsupported assertion that "other local unions" may not have equivalent knowledge of the petitioned for employees' concerns or issues, and hypothesized that this would result in inadequate representation at the bargaining table. That this result would occur is rank speculation, with no basis in fact or law. In *Beaunit Corp.*, 224 NLRB 1502 (1976), the Board rejected a petition to sever a craft unit of electricians and instrument mechanics. The petitioner in that case argued that the employees were inadequately represented because no employee in the classifications seeking to be severed was, at the time of the petition, a member of the negotiating committee or an officer of the exclusive bargaining representative. The Board was not persuaded. It noted that some of the petitioned for employees had been involved in negotiations in the past, and that the certified bargaining representative had processed grievances and negotiated on behalf of petitioned for employees throughout the bargaining history. It concluded, "while concededly there may be some areas of dissatisfaction among the employees

sought, we are not persuaded on this record that the Intervenor has failed to give adequate representation to the electricians and instrument mechanics sought to be severed." *Id.* at 1504.

The same result should apply here. While employees in the petitioned for unit are not currently officials in the MTC or its affiliated unions, and they are not currently members of the negotiating committee, this fact alone does not establish inadequate representation. *Beaunit*, 224 NLRB at 1504. As the record reflects, MTC has a long history of involving the carpenter classifications in contract negotiation and administration. Employees in these classifications will be eligible to continue these functions in the future, albeit from within another local union, if they choose. Most important, there is simply no evidence that representation of the petitioned for employees has, in fact, been negatively impacted by the disaffiliation of Local 1302.

In the end, the Regional Director's finding of inadequate representation – *i.e.*, that the petitioned for employees have been neglected because they have been left without representatives on the shop floor or at the bargaining table – is premised upon improper speculation about the representation of the employees in the future, not about how they have been represented up to the present date. D&D at 10 (finding that the petitioned for employees are entitled to a severance election "because otherwise their representation will be severely curtailed"). However, speculation about possible, future, inadequate representation is not a basis to grant a severance petition. *See, e.g., The Zia Co.*, 174 NLRB 972, 974 (1969) ("there is no evidence to indicate that the Intervenor has acted in disregard of the machinists' interests or has failed to give their demands full and fair consideration"). There is simply no basis in the record to conclude that the MTC has failed to give adequate representation to the petitioned for employees. The Regional Director's determination otherwise is clear error warranting review and reversal.

IV. CONCLUSION

For the foregoing reasons, MTC respectfully requests that the Board deny the petition to sever the petitioned for classifications from the existing bargaining unit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 11, 2014, a copy of the foregoing Intervenor's Brief on Review, with attachment, was filed electronically using the National Labor Relations Board's e-filing system. In accordance with Section 102.114 of the Rules and Regulations, a copy of the foregoing documents were electronically sent to the following:

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